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I G L H R C

# **The Status of Lesbian, Gay, Bisexual, Transgender and Intersex Rights in the CZECH REPUBLIC**

*A Shadow Report*

## **ACKNOWLEDGEMENTS**

This shadow report on lesbian, gay, bisexual, transgender and intersex rights in the Czech Republic was written by

**Olga Pechová and Martina Štěpánková**

Contributions were provided by IGLHRC (Caroline Sykora) and Global Rights (Stefano Fabeni). Translation from Czech into English by Miriam Molnar.

We want express our thanks to Czech NGOs

**Counseling Centre for Citizenship/Civil and Human Rights**  
and  
**TransForum**

for contributing information for this report.

This report was released in July 2007

## Introduction

The Czech Republic was founded on January 1<sup>st</sup>, 1993 as one of two successor states of Czechoslovakia and took over its commitments in the realm of human rights. Czechoslovakia signed the International Covenant on Civil and Political Rights in 1968. It was ratified in 1975 and came into effect on March 23<sup>rd</sup>, 1976. During the communist regime of Czechoslovakia, this treaty was considered a formality, since human rights of dissidents to the regime were regularly violated. The situation of sexual minorities was also problematic, although there weren't any organized actions against LGBTI persons. Homosexuality was decriminalized in 1961.

After the fall of the communist regime in 1989, the situation in the area of human rights improved rapidly. As early as 1990, the age of consent for same sex sexual acts between consenting adults was set equally at 15 years of age (before, the age of consent for opposite sex sexual acts was 15, while for same sex sexual acts it was 18 years.) There was also an improvement in the human rights standards of sexual minorities. Nevertheless, there still are instances of discrimination and other violations of rights of this group. There are significant problems in the area of the rights of partners as well as parental rights. The Czech Republic introduced the Registered Partnership Act<sup>1</sup> for same-sex couples in 2006; however, the law was amended by a series of restricting and even discriminating articles. In the area of parental rights of LGBTI persons, the situation is not satisfactory yet.

When it comes to monitoring the rights of LGBTI persons in the Czech Republic the main problems, , are the invisibility of the LGBTI community, the low number of LGBTI organizations and activists, and the weakness of the existing groups. No one would systematically monitor cases of discrimination against LGBTI persons, for example, by gathering information about violation of their rights, attacks on LGBTI persons, etc. The situation is further complicated by the fact that LGBTI persons hardly claim for their rights, and it is therefore impossible to document their cases through court decisions or decisions by other governmental bodies.

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<sup>1</sup> Act No 115/2006 Coll. on registered partnership and changes in some related laws

## **Substantive violations of the ICCPR**

### **Article 10 (Treatment of Individuals Deprived of their Liberty)**

Discrimination on grounds of sexual orientation and gender identity has a significant impact with reference to the criminal justice system and the way LGBTI prisoners are treated in detention. The Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment clearly addresses this issue, indicating how abuses come both by other inmates and by prison personnel, and affect particularly male-to-female transgender prisoners.

In the Czech Republic, incarcerated transsexuals don't have the possibility, while they are serving their term, to undergo hormonal or surgical treatments, even though these treatments are in accordance with accepted principles of care for transsexuals. This is not only a violation of their human dignity, but it precludes the possibility of reformation and social rehabilitation during their serving time. There has been an attempt to allow such treatment in the case of one transsexual person in prison; however, the medical personnel of the jail facility refused such practice arguing that there were psychological counter-indications. The denial of treatment was in conflict with the opinion of a civilian specialist, whose expertise and opinion was not taken into consideration. In general, the approach towards transsexuals in prisons is in direct contradiction with the medical principles applied otherwise. Information about several cases from the past few years are accessible through the NGO TransForum<sup>2</sup>.

### **Articles 16 (Recognition as person before the law) and 17 (Freedom from Arbitrary Interference with Privacy, Family, Home)**

#### ***Rights of transgender individuals***

Although the state legally recognizes gender reassignment for post-operative transsexuals and the "continuity" of legal personhood of transsexuals is legally accepted in the Czech Republic, there are several cases in which this right is not respected by public and private entities. This often derives from the system of national birth identification numbers, which are the basic tools for identification of the population<sup>3</sup>. These numbers give, among others, information about gender and are therefore changed after gender reassignment surgery and change of legal sex. The change of the ID number and name is defined in the law in close connection to the change of sex<sup>4</sup>. In the practice, a certificate by a specialist physician that states that the person underwent gender reassignment surgery is required<sup>5</sup>. Therefore, transgender people, who cannot or don't want to undergo surgery, are not able to apply for legal change of their gender and national ID number.

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<sup>2</sup> Information about this organization is available on <http://www.transforum.cz/tf/tf1.php>

<sup>3</sup> Act no. 133/2000 Coll. census law.

<sup>4</sup> Paragraph no. 17, Act 133/2000 Coll. census law.

<sup>5</sup> Fifkova, H., Weiss, P., Prochazka, I., Jarolim, J., Vesely, J., Weiss, V. (2002): *Transsexualita*, Praha, Grada. pp. 108.

Access to surgery is linked to the approval of a commission of physicians that is created in accordance with the People's Health Care Law<sup>6</sup>.

In its case law, the European Court of Human Rights (ECtHR) has established that the failure to recognize the legal status of post-operative transsexual individuals constitute, inter alia, a violation of the right to private life under article 8 of the European Convention on Human Rights and Fundamental Freedom (ECHR). Similarly, transsexual and transgender persons are entitled to protection from arbitrary interference with privacy with reference to Articles 17 of the ICCPR.

In particular in *Goodwin v. UK* (2002), the ECtHR held that the UK government failed to protect Article 8 (right to privacy) and Article 12 (right to marry) of the Convention by denying a post-operative transsexual's right to be recognized in her new gender which, as a consequence, would affect the right to formally obtain the status as a woman with her own separate and distinct identity for National Insurance purposes, as well as her fundamental right to marry a person of the opposite sex enshrined under both Article 12 ECHR and Article 23 ICCPR. Furthermore, according to the judges, "the lack of legal recognition of the change of gender of a post-operative transsexual lies at the heart of the applicant's complaints under Article 14 of the Convention."<sup>7</sup> The Court also emphasized the importance of the provisions of Article 8 and their relevance to the case by arguing that "gender identity is one of the most intimate areas of a person's private life"<sup>8</sup>.

As indicated below, many institutions are not able to accept the change of gender, and transsexuals are considered "new individuals". As a result, they are often victim of discrimination and have to constantly disclose information about their personal history.

Transsexual people have to pay for services (for example fees for bank accounts), which were already paid for; or they are denied benefits that they had been previously awarded (for example bank and insurance services linked to a client's previous history).

In other instances, transsexual individuals are denied issuance of important documents, such as documents about work history or the number of years worked, or they are denied the issuance of decree of disability benefits and other similar certificates. In all these cases, they have to prove the continuity of their legal personhood in complicated ways, generally by disclosing personal information regarding their life, the process of gender reassignment and the previous legal identity, whereas in other instances such proof is impossible, because of the reluctance of administrative workers or whole institutions, that often operate with record and information systems that don't allow the change of the national ID number.

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<sup>6</sup> Paragraph no 27a, articles 1 and 2, Act no. 20/1996 Coll, about people's health care, in accordance with later legal bylaws.

<sup>7</sup> *Goodwin v United Kingdom*, 588 Eur. Ct. H.R. available at <http://www.worldlii.org/eu/cases/ECHR/2002/588.html>

<sup>8</sup> *Van Kuck v. Germany*, 37 Eur. Ct. H.R. Rep. at 73 (2003) available at <http://www.worldlii.org/eu/cases/ECHR/2003/285.html>

Transsexuals are often forced to pay administrative fees and are, on the other hand, for various reasons denied benefits sequent from their history. This occurs most often with private subjects (banks, insurance companies), but also, to a lesser extent, with public institutions (for example public libraries).

In all these cases post-operative transsexual individuals are forced to submit documents about gender reassignment in order to prove continuity of their legal personhood: this constantly interferes with their right to privacy as guaranteed by article 17 of the ICCPR and article 8 of the ECHR and increase the risks for discrimination to which transsexual people are already subject.

## **Article 20 (Incitement to discrimination)**

### ***Hate Crimes***

Statistics, whether official or un-official, about hate crimes based on sexual orientation and gender identity do not exist in the Czech Republic. One of the reasons for this lies on the fact that the Czech Penal Code<sup>9</sup> does not recognize hate crimes based on the victim's sexual orientation or gender identity. Therefore, disaggregated data from other crime categories are not available, while it is impossible to know the number of hate crimes based on sexual orientation and gender identity from the aggregate numbers.

This of course doesn't mean that such crimes don't occur. Based on testimonies of several individuals it is clear that such attacks occur, especially to individuals<sup>10</sup>, and to lesbian and gay clubs. The attacks are often verbal, but physical violence also occurs. According to a questionnaire-based research in 2002 and 2003, conducted by the NGO Gay Iniciativa<sup>11</sup>, 15 percent of respondents (39 persons) said that they have experienced physical attacks with homophobic motivation.<sup>12</sup> The problem with documentation is that victims tend not to file complaints about these attacks with the police, and if they do, the victim's sexual orientation does not play a big role in the investigation.

The Penal Code<sup>13</sup> establishes for crimes such as murder, intentional harm of someone's health, and intentional severe harm of someone's health, a higher penalty in the event that these crimes were motivated by race, membership in an ethnic group, nationality, political beliefs or religious affiliation. Sexual orientation and gender identity are not on the list of grounds as aggravating circumstances.

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<sup>9</sup> Act no. 140/1961 Coll., Penal Code in accordance with later legal bylaws.

<sup>10</sup> Information about one such case from May 2007 is available on <http://www.techno.cz/party/44284/incident-v-plzenskem-ph+?open=21385&show=report>

<sup>11</sup> Gay Iniciativa was for many years one of two biggest Czech LGB organizations.

<sup>12</sup> Prochazka, I., Janik, D., Hromada, J., (2003): Spolecenska diskriminace lesbickych zen, gay muzu a bisexualu v CR. Praha. Gay iniciativa v CR. It can be found at [www.gay.iniciativa.cz/www/index.php?page=clanek&id=256](http://www.gay.iniciativa.cz/www/index.php?page=clanek&id=256)

<sup>13</sup> Paragraphs 219, 221, 222 Act no. 140/1961 Coll., Penal Code in accordance with later legal bylaws.

Presently, a new Penal Code is being prepared and it is expected to include aggravating circumstances in cases of murder, intentional harm of someone's health, intentional severe harm of someone's health, torture and other cruel and inhumane behavior, violation of personal freedom, harm to someone's property. Such circumstances will apply only to those attacks motivated by race, membership to an ethnic group, nationality, political beliefs or religious affiliation.

According to the draft Penal Code, violence against a group of people or individuals, defamation of the nation, race, ethnic group or other groups will be considered a crime. This will not improve the situation for LGBTI persons and attacks motivated by hatred against them will not be considered aggravating circumstances.

The draft Penal Code would therefore fail to offer protection from serious violation of human rights either by state authorities or non state actors.

Open calls for hate or discrimination against sexual minorities are not very frequent in the Czech Republic. During the past few years, only two instances of such acts were recorded. Some members of parliament attacked the homosexual minority during the debate on the registered partnership act for same-sex couples<sup>14</sup>.

In a second case, a publication called "The Therapy of Homosexuality"<sup>15</sup> was distributed by a non governmental organization in 2003 and 2004 to public schools throughout the Czech Republic. This publication, in contradiction with prevailing scientific and social evidence<sup>16</sup>, advocated for the suppression of signs of a non-heterosexual orientation. The publication was withdrawn<sup>17</sup> only after a sharp critique on the part of the public and medical experts; nevertheless, there were no active steps taken to prevent similar homophobic acts in schools, even though there still are publications presenting false and alienating information about the life of sexual minorities on the Czech book market.

In daily life, homophobic attacks and insults are still rather frequent. One reason, among others, is that there is no legal instrument prohibiting such conducts. According to a poll conducted in 2002 and 2003 by the NGO Gay Iniciativa, 38 percent of respondents (100 persons) said that they have encountered verbal attacks in their environments.<sup>18</sup>

## **Article 23 (Family Life)**

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<sup>14</sup> The hardest attack was by Member of Parliament Pavel Tollner in 1999 and the text of his speech is available on [http://www.partnerstvi.cz/rp-1999/1\\_07.phtml#Tollner](http://www.partnerstvi.cz/rp-1999/1_07.phtml#Tollner). His colleagues from Christian-Democratic Union weren't as rough later, but the essence was the same. MP Jiri Karas was very active, for example. Some of his opinions from 2003 are available on <http://www.partnerstvi.cz/rp-2003/2003-08-08-nevpes-karas.phtml>

<sup>15</sup> The text of this publication can be downloaded from [www.homosexualita.cz/terapie.pdf](http://www.homosexualita.cz/terapie.pdf)

<sup>16</sup> Detailed reference is available on <http://zpravodajstvi.ecn.cz/index.stm?x=153233>

<sup>17</sup> Detailed reference is available on <http://gl.cz/vh-terapie>

<sup>18</sup> Prochazka, I., Janik, D., Hromada, J, (2003): Spolecenska diskriminace lesbickych zen, gay muzu a bisexualu v CR. Praha. Gay iniciativa v CR.

In *Joslin v. New Zealand*<sup>19</sup> the Human Rights Committee excluded that the refusal by the state to legally recognize marriage for same sex couples constitutes a violation of the scope of article 23 of the ICCPR. However, in their individual opinion, Committee members Lallah and Scheinin argued that the denial to same-sex couples of benefits available for married couples was in fact a form of discrimination under article 26 of the ICCPR. The specific issue of discrimination was later reconsidered in *Young v. Australia*<sup>20</sup>, where the Human Rights Committee found that the lack of recognition to unmarried same-sex couples of specific pension benefits granted to unmarried opposite-sex couples violated article 26 of the ICCPR, opening up to a different interpretation of the notion of family under the scope of article 23. This decision has been recently confirmed in *X v. Colombia*<sup>21</sup>, on a similar issue of pension benefits.

The jurisprudence of the Human Rights Committee has an impact on the situation in the Czech Republic. As a result of efforts of many years, the Registered Partnership Act for same-sex couples<sup>22</sup> was approved in 2006. The law instituting the registered partnership establishes as a requirement that only same sex couples may have access to the new institution, while the institution of marriage is exclusive for opposite sex couples. In this sense registered partnership and marriage are, under the Czech law, two institutions regulating family life respectively for same sex and opposite sex couples. When we compare these two institutions, however, it is clear that registered partnership does not offer same-sex couples all the benefits that marriage grants. By entering registered partnership, partners are still denied joint property rights, tenancy rights, and are excluded from joint taxation and survivor pension rights. Similarly, according to the Family Act<sup>23</sup>, adoption is only open to married couples and excludes registered partners. The denial of the mentioned rights to registered partners that, like married couples, enjoy a marital status under the law constitutes discrimination under articles 23 and 26 of the ICCPR.

## **Articles 24 (Special protection of Children)**

### ***The right to adopt a partner's child***

As it is impossible for a same-sex couple to jointly adopt a child, also it is impossible for one partner to adopt the child of the other partner in a registered partnership. According to the Family Act<sup>24</sup> only married persons can adopt children of their partners. According to the Registered Partnership Act<sup>25</sup>, same-sex registered partners have a duty to support their partner's children: nevertheless, the law does not give them the possibility to legally adjust their relationship with their partner's biological children. This situation is discriminatory not only towards same-sex couples, but it is also in clear contradiction with the best interests of children.

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<sup>19</sup> Communication no. 902/1999.

<sup>20</sup> Communication no. 941/2000.

<sup>21</sup> Communication no. 1361/2005.

<sup>22</sup> Act no. 115/2006 Coll. on registered partnerships and changes in some related laws.

<sup>23</sup> Paragraph 72, part 2 Act no. 94/1963 Coll., Family Act, in accordance with later legal bylaws.

<sup>24</sup> Act no. 94/1963 Coll., Family Act, in accordance with later legal bylaws.

<sup>25</sup> Paragraph 13, part 3, Act no. 115/2006 Coll. on registered partnerships and changes in some related laws.

The biggest problem in terms of the best interest of the child occurs when a registered partnership ends by death or separation. If the biological parent of a child dies, there is a risk that this child will be taken away from its environment and will be given to its biological relatives. In the case of separation, the non-biological parent may be denied visitation rights with the non-biological child. In such cases, the partner has no legal recourse to prevent such situations from occurring and her or his position is very complicated. So far there is no information of any court cases that would have dealt with the above mentioned issues.

### ***Children of transsexual parents***

The practice according to which transsexual persons are being forced to give up their parental rights, or to have the mentioned rights restricted in order to be authorized to gender reassignment is highly problematic. This practice derives from the fact that medical commissions created in accordance with the People's Health Care Act<sup>26</sup>, which decide about somatic therapies for transsexuals, are not bound by any ethical, medical or legal norms. The commissions are able, therefore, to request any condition to approve the needed medical treatments.

In the past, it was common practice to require that transsexual parents give up their parental rights in writing, a procedure that does not have any basis in the Czech legal system<sup>27</sup>. Although this practice is not very common anymore, there is still pressure on transsexuals to restrict contact with their children, regardless of the best interest of the child<sup>28</sup>. No case has been taken to courts, which also shows the dependence of transsexual persons on the decision of these commissions, and therefore their vulnerability while undergoing the gender reassignment process.

In at least one case the Department of social and legal protection of children<sup>29</sup> was involved in such practices. The section's representatives pressured a male to female (MtF) transsexual to give up rights to care for her child despite the fact that this person cared for her child for a long time while on paternity leave. Unfortunately, this person gave in to the pressure and gave up also her rights to appeal, even though she later realized that she was a victim of a discriminating and unlawful procedure<sup>30</sup>. In a recent court case the Department of social and legal protection of children requested a ruling to take away children of a female to male (FtM) transgender person, despite the fact that the children's biological father cannot care for them.<sup>31</sup>

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<sup>26</sup> Paragraph 27a, part 1 and 2, Act no. 20/1966 Coll., on people's health care in accordance with later legal bylaws.

<sup>27</sup> Fifkova, H., Weiss, P., Prochazka, I., Jarolim, J., Vesely, J., Weiss, V., (2002): *Transsexualita*. Praha. Grada. Pp. 108.

<sup>28</sup> Information about an older case can be accessed at <http://home.tiscali.cz:8080/iva.w/zprava2.htm>

<sup>29</sup> Institute of public administration which represents the right of children. Its powers are based on Act no. 359/1999 Coll. on social and legal protection of children, in accordance with later legal bylaws.

<sup>30</sup> Information collected by the authors in confidential interviews, on file with Global Rights.

<sup>31</sup> <http://www.translide.com/forum/viewtopic.php?t=259>,  
<http://www.translide.com/forum/viewtopic.php?t=416>



### ***Intersex children***

The situation of intersex persons in the Czech Republic is mostly unknown, because there aren't organizations or groups that specifically focus on the issue. Some information is available thanks to intersex individuals looking for gender reassignment, who are therefore in contact with the transgender community. According to the information provided<sup>32</sup>, medical procedures on intersex persons are often carried out at a very young age when the person cannot express any consent, although most of these procedures have often serious psychological and somatic consequences. There is no proof, however, that the procedures are being done without parental consent, but it is unlikely that all necessary information about all the invasiveness and the possible consequences of such procedures are being provided to the parents before they express their consent. Because the healthcare system in the Czech Republic is under state control, and many hospitals are under direct supervision from the state, the Government may be held responsible for violation of the rights of the children on this matter.

### **Article 2(1) and 26 (Non-discrimination)**

The principle of non discrimination is certainly a cross-cutting frame to protect from violations of human rights of lesbians, gays, bisexuals and transgender people under the ICCPR. The most important reference to this extent is the 1994 decision in *Toonen v. Australia*<sup>33</sup>, where the Human Rights Committee found that criminalization of consensual same-sex sexual private behaviors violated article 2(1) and article 17 of the Covenant. This milestone decision is certainly the basis for further references by the Human Rights Committee, as well as from other special procedures: as an example, both the Study on non-discrimination as enshrined in article 2(2) of ICESCR, by the Sub-Commission on the Promotion and Protection of Human Rights, and the Report of Special Rapporteur on violence against women of March 10, 1999, highlight how article 2(1) must be interpreted as including the discrimination based on sexual orientation.

In the Czech legal system, legal protection against discrimination is spread out through different pieces of legislation and not fully consistent. The degree of protection depends on the ground of discrimination and the field in which it occurred. On constitutional level, the protection against discrimination is established by Article 3 of the Charter of fundamental rights and basic freedoms<sup>34</sup>, which includes an open non discrimination clause. Sexual orientation is not explicitly listed among the grounds of discrimination, however, it is clear from the jurisprudence of the Constitutional Court, that such provision would also cover the case of discrimination on the basis of sexual orientation.

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<sup>32</sup> Information collected by the authors in confidential interviews, on file with Global Rights.

<sup>33</sup> Communication no. 488/1992

<sup>34</sup> Article 3, paragraph 1, Act no. 2/1993 Coll., Decree of basic rights and freedoms, "Everyone is guaranteed the enjoyment of her fundamental rights and basic freedoms without regard to gender, race, color of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth, or other status.

Protection against discrimination on grounds of sexual orientation is fairly well covered by labor law, also as a consequence of the obligation of the Czech Republic to implement the European Union's Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

The Employment Act<sup>35</sup>, the Act on Members of the Armed Forces<sup>36</sup>, the Act on Service by members of the Security Services<sup>37</sup>, and the Civil Servant Act<sup>38</sup>, all clearly prohibit discrimination based on sexual orientation and guarantee the victim's right to seek effective protection of the court. The new Labor Code<sup>39</sup> (effective since January 1<sup>st</sup>, 2007), however, offers a weaker protection against discrimination of employees because, although it still includes the prohibition of discrimination, it does not include measures to guarantee effective legal remedies. The new Labor Code was debated in the Parliament simultaneously with an anti-discrimination bill, that was supposed to enact such remedies but was not approved. This certainly disadvantages LGBTI people, as discrimination at the workplace is one of the most recurrent and problematic issues. The failure of the state to guarantee effective protection against discrimination constitutes violation of the principle of non-discrimination under the ICCPR.

In other areas, such as education, social benefits, health care, services including housing, the prohibition of discrimination is regulated in a limited fashion if at all. In particular, the anti-discrimination provision of the School Act<sup>40</sup> states the right to education without discrimination on the basis of several grounds, excluding sexual orientation, with significant consequences on underage LGBTI students.

Currently, an anti-discrimination bill filling the above mentioned gaps is pending before the Parliament. The proposed bill states equal rights and prohibits discrimination in the above mentioned fields on the basis of several grounds, including sexual orientation. The proposal defines the notion of discrimination, ensures judicial procedures for the enforcement of the prohibition of discrimination, including the possibility to claim measures to end discriminatory practices, to eliminate effects of discrimination, adequate compensation and the possibility of financial compensation for non-material damages. The proposal also establishes the institution which would be responsible for dealing with equal treatment cases, mandating such competences to the Ombudsman. This law proposal is especially beneficial for transsexuals, in that it considers discrimination based on gender identity as discrimination based on sex.

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<sup>35</sup> Paragraph 4, Act no. 435/2004 Coll. on employment in accordance with later legal bylaws; this law regulates access to employment.

<sup>36</sup> Paragraph 2, Act no. 221/1999 Coll., on Members of the Armed Forces in accordance with later legal bylaws.

<sup>37</sup> Paragraph 77, Act no. 361/2003 Coll., on Service by Members of the Security Services in accordance with later legal bylaws.

<sup>38</sup> Paragraph 80, Act no. 218/2002 Coll. on government employees of service offices and about the remuneration of these and other employees in service offices (Service Act) (effective January 1<sup>st</sup>, 2009).

<sup>39</sup> Paragraph 16 and 17, Act no. 262/2006 Coll., Labor Code, this code regulates employment relationships.

<sup>40</sup> Paragraph 2, letter 1, Act no. 561/2004 Coll., about pre-school, primary school, high school, vocational training and other education (School Law) in accordance with later legal bylaws.

However, this is the second attempt to approve the anti-discrimination bill, after a first failure: the first draft of the anti-discrimination law was approved by the government in December 2004, and was rejected by the Parliament in May 2006. The new proposal was approved by the government on June 11<sup>th</sup>, 2007. This proposal, almost identical to the previous one, includes the prohibition of discrimination on grounds of sexual orientation. The approval of the law would guarantee the effective implementation of the principle of non discrimination as enshrined by the ICCPR.

Although there is only one known case of discrimination based on sexual orientation debated before courts concerning the denial of employment<sup>41</sup>, the lack of effective protection prevents LGBTI victims of discrimination from seeking remedies through the judicial system. The NGO Gay Iniciativa conducted a survey in 2002 and 2003 among LGB persons in which the 12% of the respondents (31 persons) reported discrimination on the workplace, while the 25% of respondents said that they were harassed on their workplace. A 13% of respondents experienced discrimination in services<sup>42</sup>.

Discrimination of transgender individuals is still significant in society, especially with reference to the job application process as well as at the workplace. Also in this case, the lack of case law is a symptom of the lack of effective remedies. In the fall of 2004, a case of a woman who was seeking employment in the Czech Army got a lot of media attention. She successfully passed all entry tests, but was at the end denied employment with an explicit reference to her gender identity. After the media attention, the Secretary of Defense promised to investigate the case. The investigation confirmed the previous decision of denying the position, but referred to the state of her health<sup>43</sup>. This case appears suspect in the light of the decisions of the ECtHR in *Lustig-Prean and Beckett v. the United Kingdom* and *Smith and Grady v. the United Kingdom*, where the judges considered that the discharge of military personnel on grounds of sexual orientation constituted a violation of the right to privacy under article 8 of the ECHR as well as of the principle of non discrimination under article 14 of the ECHR.

### ***Discrimination in parenting***

The Family Act allows adoption to any individual who does not live in a formal engagement, regardless of her or his sexual orientation<sup>44</sup>. A married person can also adopt a child as an individual, but must obtain a statement of agreement from her or his spouse<sup>45</sup>. On the other hand, a person who enters a registered partnership is not allowed to adopt a child at all. Persons in a registered partnership are this way denied access to

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<sup>41</sup> <http://www.iniciativa.cz/www/index.php/?page=clanek&id=1251>

<sup>42</sup> Prochazka, I., Janik, D., Hromada, J., (2003): Spolecenska diskriminace lesbickych zen, gay muzu a bisexuálu v CR. Praha. Gay iniciativa v CR. It can be found at [www.gay.iniciativa.cz/www/index.php?page=clanek&id=256](http://www.gay.iniciativa.cz/www/index.php?page=clanek&id=256)

<sup>43</sup> Information about this case is available on [www.translide.cz/transsexualka-bouram-predsudky?a=srch](http://www.translide.cz/transsexualka-bouram-predsudky?a=srch)

<sup>44</sup> Paragraph 64, Act no. 94/1963 Coll., Family Act in accordance with later legal bylaws. Under the current social situation and for the reasons explained below, it is unlikely that an openly gay or lesbian individual would be granted this right.

<sup>45</sup> Paragraph 66, article 2, Act no. 94/1963 Coll., Family Act in accordance with later legal bylaws.

adoption as individuals as well as a couple<sup>46</sup>. Therefore, in terms of access to adoptions, LGB persons that entered a registered partnership are treated differently without reasonable justification: if in fact, before entering into a registered partnership, they have the right to adopt, they lose as a consequence of their new status. This is not only inconsistent *per se*, but raises serious concerns under article 2(1) and 26 of the ICCPR.

### ***Artificial insemination***

Compared to opposite sex couples, lesbian couples are disadvantaged when it comes to artificial insemination. In the Czech Republic, access to artificial insemination is reserved to opposite sex couples only. An infertile couple who is allowed to access artificial insemination consists, according to the People's Health Care Act<sup>47</sup>, of one woman and one man: in this case marriage is not even a requirement. Artificial insemination is therefore denied lesbian (either unregistered or registered) couples.

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<sup>46</sup> Paragraph 13, article 2, Act no 115/2006 Coll. on registered partnership and changes in some related laws.

<sup>47</sup> Paragraph 27d, article 3, Act no. 20/1966 Coll. on people's health care in accordance with later legal bylaws. "The assisted reproduction according article 1 letter b) can be provided based on a written request of a woman and a man, who want to go through this treatment together (further: infertile couple), if it is from a medical point to view improbable or impossible that the woman would get pregnant the natural way, or if there is a proven risk of transmission of genetic diseases or other defects. The request must contain the man's agreement with the woman's artificial insemination; the agreement must be expressed before each artificial insemination procedure. The request cannot be older than 24 months; it is part of the woman's health documentation."

## **Final summary**

### **Article 10**

In the correctional system, rights of transsexuals to a dignified treatment are violated because of the impossibility to receive hormonal or surgical treatments while in jail. The possibility of reformation and social rehabilitation is therefore extremely complicated.

### **Articles 16 and 17**

Transsexual individuals have significant problems with proving the “continuity” of their legal personhood, because of the system of national identification numbers, in violation with the decisions of the ECHR and, as a consequence, of the ICCPR.

### **Article 20**

The Penal Code does presently not allow that homophobic hate may be considered as an aggravating circumstance in the case of an attack against life or physical integrity of the victim motivated by the victim’s sexual orientation or gender identity, as the penal legislation establishes in the case of racially motivated crimes. The State does not provide therefore adequate protection against homophobic attacks.

### **Article 23**

Since 2006, the Czech Republic allows LGB persons to enter into formal same-sex relationships (registered partnerships), that provide same-sex couples with significantly fewer rights than marriage. Registered couples are disadvantaged compared to married couples when it comes to several basic rights. Different treatment is suspect in the light of the existing jurisprudence of the Human Rights Committee.

### **Article 24**

Rights of children in a same-sex couples are violated because the Czech law does not allow partners to adopt each other’s children. Children in a same-sex relationships legally only have one parent: this situation seriously jeopardizes the principle of the best interests of a child. The rights of the children of transsexual parents are violated as well, especially by an inadequate support and help from the state in the transition period, when solutions restricting contact between parents and children are preferred.

### **Articles 2 and 26**

In the Czech Republic, discrimination against LGBTI persons is rather common. The legal prohibition of discrimination is inadequate, especially in the area of employment and occupation, where the discrimination is in fact most recurrent.

The area of parental rights is also extremely suspect as far as the prohibition of discrimination is concerned. Individuals in a registered same sex couple cannot adopt, while they could as individuals if they were married or single. Lesbian couples are denied the option of artificial insemination that is, on the contrary, available to opposite sex couples, even if unmarried.